

Resolve, Chapter 140
Integrating Water Supply Protection
Senator Inn, Augusta
October 12, 2006

Details of “shoreland zoning model” presentation – Andy Tolman

(PP=PowerPoint Slide)

-comment or question

A: answer to question

Comments on the following:

PP: Agreement

PP: New England Update

PP: Northern NE

PP: Proposal for shoreland zone model

PP: Primary protection zone

-How would this work if I had a house that needs a new septic system? A: We use the best technology (keep it as far away as feasible and, if needed, use advanced treatment) to replace it to minimize the risk.

-Is the existing authority that if there is a problem the water system can inspect? A: Yes, the water system can enter a property if they suspect an immediate health-threatening problem.

PP: Secondary Protection Zone

-Who conducts the review of all new activities? A: The planning boards would conduct the review. There is an existing provision that allows boards to require the developer to fund an independent technical review. Do the planning boards exercise this option? A: Many boards in southern and coastal Maine use this option now.

PP: Durham map

-Are the blue dots the 300 hundred-foot circles? A: Yes.

-300-foot protection radius is about 6 ½ acres. A: In most cases, the well owner is the property owner for much of the protection area.

PP: New Gloucester map

PP: Machias, Marshfield, E. Machias map

PP: E. Machias map

-If the inclination is to call salt a toxic substance we would be reducing applications of road salts in front of schools. A: This one is a balancing act; we have two activities that influence public safety: safe transportation and safe drinking water. The intent is to manage both the activities to minimize the overall risk.

PP: Greater Augusta map: Sidney

PP: Zoom in of Augusta map (Bond Brook area)

-In the area near the south well, the land is used for hay. In years past, they have been asked not to spread manure.

-There are a lot of above ground oil tanks that require management. There's not much developable land in the protection areas.

PP: Gardiner

-Are both the wells on the Gardiner estate? A: Yes, very close to the Gardiner estate. A lot of the land is in there is Gardiner estate.

PP: Other Considerations

-RE: Shoreland zoning: Are you proposing the 1000-foot circle to measure where it comes out on the water? A: The measurement is from the intake-location on the water. The area where that radius touches land would be a candidate for Resource Protection Zoning.

PP: What can we make work?

-Shorebird nesting thing, I think that it would be key to have developers, contractors etc. to inform them this is coming. Request a separate meeting. They need to know this is coming. My association is likely to oppose this. We all agree that we need to maintain the quality of water. We would prefer to see a town do this own there own rather than a state mandate. Compensation would soften this.

-Existing zoning, land uses and how these meld together. A lot of the reluctance on the part of towns is that fear of land use controls. Small water suppliers, schools and mobile home parks have very limited technical capacity. They often own enough land to protect their supplies, if they manage their property well. So the town doesn't want to tell them what to do. There is a place for larger communities.

-If there is going to be this restriction it needs to go both ways.

-If the end result is that the Legislature has to resolve the conflict between property owners and public rights. What if when the town approves the new development and the developer signs an acknowledgment to restrict activities to reduce their risk? No developer wants to contaminate a water supply well. At least the development decision is made with everyone being aware of the situation.

-Is this taken to the developer and homeowner? Who could oppose just an acknowledgement at the time of approval? At least it is out front. At least when the water is sold future owners would be aware as well. This would be better than nothing at all.

-This would still require that all towns show source protection areas on their maps.

-This would give an opportunity for outreach and education. As ownership of the subdivision changes, the new owners would be responsible as the original owners were when it was approved.

-If I buy a house that is in a wellhead protection area, would I be liable if I polluted in any way? A: Technically polluting the water is a crime, but proving it is difficult.

-It can be looked at as protection of property for new owners and the rights of purchasers of property. Perhaps this idea could be endorsed.

-Didn't TPL come out last year with a study that showed that property values increased in and near conservation zones?

-What does your organization perceive to be overly restricted? A: First, there are concerns with taking any rights to land from a person. They have bought the land to do what they want. It sets a precedent. Buyers and sellers are moving constituents. People only get involved in the buying and selling. Beyond that, people (other organizations) are not watching this. The other issue, if the tax rolls are reduced, other people are taking up the slack for that lack of development. The tax would have to be paid on the land that is

taken off the rolls. Lands for Maine Future Program could help. We should compensate the owner for loss of use of property.

-They already can't put ground water contamination sources in a protection area (like a septic system) now. What is it besides not putting a septic that is going to change with this proposal?

-Restricting activities should be reviewed by the buyer with full knowledge of what they can or cannot do. Existing owners should know that there is a restriction.

-What is the taking if you are still able to use the land with restriction? A: One is that the wellhead protection area in a downtown area. There are still parcels that still could be developed years ago, but now cannot. If an individual goes to a town that has no zoning and buys land now, and things change in the future, this greatly affects their plans.

-There is a risk for a buyer, because changes are going to come down the pike. There is a risk assumed when you have to buy a piece of land. There is an inherent risk in land purchases.

-Talking about purchasing protection areas, for the larger ones, that have expanded zones, did you say that some of them have development conservations easements? Is this a potential solution to land owner property rights. It would be a required purchase of development rights. A: some systems have successfully used conservation easements to protect critical areas for their supplies.

-The case is that person came in to put in a replacement septic system, a four bedroom one. They didn't have room on the lot for a four-bedroom system, because the lot was too small. They installed a 2-bedroom system. The house was put up for sale, and the seller was advertising it as a four-bedroom home. We notified the realtor and had them change the advertising. It is illegal to falsely advertise real estate. The buyer and the seller have to know that their land might impact the public water supply. I see it as a positive for the buyer. The seller made promises that only 2 bedrooms would be occupied. Legally we had no choice to approve the two-bedroom system. The seller had provided the information that it was a four bedroom house. I do think that protecting buyers and sellers rights would be a good thing.

-Well location restrictions for public roads. A: the standard is that the well cannot be in the right of way, which is 33 feet from the centerline of the road. It should be as far away as possible. We have a different standard for protection in that area for the right of way. Reducing salt use, there are technologies to reduce salt and pesticide use.

-Keeping a water supply more that 300 feet away from the road, whenever possible, is a benefit to the owner.

-New water supply source approval requires that a protection plan be implemented. The water supplier's consultant makes a recommendation as to what needs to be done for the protection area, and the supplier does their best to implement the plan. Protection is not a priority at the local level. I have many copies of comprehensive plans that go to great lengths to ensure pornography should not be sold in the area around a school, but don't have anything about public water supply protection for the school.

-The abutter notification law, how many has that increased in terms of notifications to water suppliers? A: The Portland Water District's watershed is about 200 square miles. We have received one notice in four years.

PP: Agreement

-What are you asking for agreement on? A: Pieces of recommendation three we can support.

-If there are pieces you cannot support or can't let us know.

-Notification could potentially be brought back to the board. Reasonable compromise. Everything else I have problems with. Where is the money going to come from for this?

A: The proposal provides a requirement that the towns adopt the ordinance and they would have to change their zoning maps. If towns did not adopt the ordinance, the DEP or the Drinking Water Program would implement the plan. We might be able to redirect existing funds to provide mapping. The Drinking Water Program would have to provide the mapping (again) and the towns would have to redraw their maps.

-Majority of this is fine. Implementation, enforcement and inspection, the capacity of many towns is not there. Looking at future water supplies, that town could be looking at their comprehensive planning.

-Original recommendation # 3: NRPA already requires the protection of ground water. There may already be the ability to review activities for impacts on public water supplies. Environmental laws are not enforced a great deal. There are some existing mechanisms that are easy to refine to protect water supplies rather than make new ones. Setbacks between sources and potential threats need to be reciprocal. (Setbacks are reciprocal for new sources; existing sources and existing threats require management)

-We think it all looks good. Consequences, is there a way to make consequences felt without having to pass a state wide minimum.

-The ordinance should point that things are not restricted or encouraged. And to provide solutions and other options. And provide other information to land owners. If this is rolled out at the same time, that is one package that can go out at one time this could move things along easier.

-A lot of research needs to be done in these areas underground. We don't know what is there. The research is costly to determine what exists already. It does protect our current activity because we don't know what is currently there.

-No objection. It is overdue, is it perfect, probably not. By passing a minimal mandatory ordinance, the burden of proof falls on the developer. This should be part of it and should be built into the ordinance.

-Something needs to be done to see that municipalities are abiding by the ordinance.

-Of course it should be protected, but the details represent a difficulty. I would like to see the mapping of current surface water supply is and overlay it with current protection zones and the shoreland zoning in those areas. Expand or put under NRPA and how do we depict it and put it on GIS mapping. This only picks up the state regulated activities and not the NRPA.

-PL761 amendment is worthwhile. Minimum standards for ordinances are done with coordination with the towns and provision of that for state funding assistance to help the towns with this ordinance. The towns are not going to buy into it right away.

-I am in favor of everything here.

-We would object for to using Land for Maine's Future money if the land is not available for public recreational use.

PP: Recommendation #2

PP: Land Conservation

Identify tools, Sources of funds, Incentives

- How were these two land uses chosen? A: We looked at what local and national experiences have said concerning land uses that are compatible with maintaining water quality. Forestry and agricultural land use are the most compatible. We are trying to work with agencies and other organizations to bring positive pressure to sustain these lands in low-impact uses.
 - I am aware of the tools and funds but I am not aware of the gaps.
 - Where does the money for Land for Maine's future come from? A: General Obligation bonds provide the funding.
 - What if there were two bond issues in the future, one directed specifically for drinking water protection. LMF's purpose is to provide public access on land throughout the state.
 - Isn't there already a set-aside for agricultural lands? (Yes)
 - Most farmers cannot have people running all of there property. Generally speaking a farm can be a dangerous place.
 - Preserving those areas without intensive development and also allow public access. A: There are areas in southern Maine where water suppliers, land trusts, and towns are managing access to public water supply lands successfully.
 - The Stormwater Law allows compensation fees be used to protect areas adjacent to protected water supplies. Make this a specific component of the plans DEP is making.
 - The USDA Forest Service recently completed a National case study for conversions of farm and forest to commercial and residential. Out of 15 watersheds at risk nationally, 3 are in Maine. There is a need to pursue land conservation. If those lands are converted to other uses there could be significant down stream impacts. Bond allotments could be increased. Incentive wise, for land conservation for permanent protection, we administer a couple of programs to encourage them to retain their property as farm or forest. There are funds available to offset the cost of non-income activities. Cost share rates; there are additional funding from fish and wildlife service. NRCS has a conservation security program that could provide funding.
 - Forestry: The Forest Stewardship Council has a program for forests that are harvested in a sustainable way. This also goes towards protecting water supplies as well. Green vs. non-green certified lumber.
 - MA has issued grants to farmers for best management practices.
 - There is some resistance for private landowners. They would have an obligation to the federal government. The biggest challenge is to ward off conversion of property. Certification, you have a market-based incentive. They snap to when they hear 3rd party audits. Market pressure for 'green' wood is encouraging adoption.
 - Develop a program for agricultural lands where following some responsible standards would provide a reduction in taxes for farms in a resource protection area. Town could get reimbursed from the state. Development done in a certain way could also be included in such a program. Kind of like the tree growth model.
- There is an incentive for responsible subdivision development in current Site Location standards: density bonuses for clustering.

- More support of water conservation districts and triple the funding, would provide much benefit. They just don't have the funding to provide the public outreach, etc. More people are needed here to do the work.
- The biggest hurdle is finding more money. If TABOR passes, we won't be looking for money. Otherwise, we present the programs in need of more money with reasons why they should be funded. The cost benefit is incredible in prevention compared to cleanup.
- Example of savings: the Catskill watershed system in NY. Saving money through watershed protection so water does not need to be filtered. NYC provides funds and resources to the Watershed Agricultural Council to encourage responsible agriculture.

Recommendation #2

- I support it.
- I would want to see the language.
- Wholehearted support as long as the agricultural techniques are identified and non-recommended uses and recommended uses are identified.
- Local water users, see what their needs are.
- No objections. I am trying to think of other land uses, when we are talking about land conservation, it is an issue.
- Agriculture and forestry can be seen compatible with outdoor recreation. Use this as well. Adding a third compatible land use.
- Ok. I would like to see what you come up. I would like to know how you are identifying sustainable. A: Minimal environmental impact, not necessarily organic. They should be good neighbors that stay in business. Not necessary USDA Organic.
- Sustainability and certification didn't mean anything to anyone. Responsible did. This may be more of a term that would be more inclusive. The people using the property are using it in a responsible manner. Sustainability issue would bring the question up as to what is being sustained.
- Not speaking for our board, we believe the concept to be agreeable.
- Show me the money. The resources are the focus. Is there a correlation that can be derived from agriculture and forestry use to manage these land uses. There has to be some generated source of income for these ideas.

Next steps:

Goal for next meeting is to try to draft up the recommendation section of the final report. The background has all been written but my goal is to have some language for all three recommendations and fleshes out some level of detail as to what we are going to be asking for after the election as well as monetary figures.

Recommendation #3: How far would we have to notch back to see if people would be comfortable with it and if it would be any good?

-PL761 amendment: accountability and teeth in it.

Recommendation #1: state agencies considered their impact on their water supplies. Cooperation with other state agencies is a key for everyone to succeed.

Tiers 1 – 3, what if support isn't there for all of them? How would it be presented back to the legislature? I am open to how we can make the report work; we will consider discussing recommendations that have less than full support, and presenting the arguments for and against each.

-The IF&W has a mandate to protect resources and provide reasonable use of these resources. Protection of ground water and land protection protects the land for our uses. So we are looking at two parts of the public in terms of protection. I don't think you are going to capture that in this discussion. I am here with concerns about reasonable public use.

Andy: prepare draft for next meeting, outline level sent out with the meeting announcement.

The Group is to bring back thoughts and other material to the next meeting.

How can you possibly present to the legislature in February that would present enough details, but it still wouldn't not show all of the details. A: There may be some discomfort around agreeing to something where all of the details are not available. There will always be more details to work out in the implementation of the recommendations. Our goal is to provide a structure that we can use to develop workable protection.